

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

FILE COPY

IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS AGAINST

MICHAEL H. CARY, D.D.S.,  
RESPONDENT.

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FINAL DECISION AND ORDER  
89 DEN 13

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Michael H. Cary  
c/o Paul Erickson  
Gutgalss Erickson & Bonville, S.C.  
700 North Water Street  
Milwaukee, WI 53202-4267

Wisconsin Dentistry Examining Board  
P.O. Box 8935  
Madison, WI 53708-8935

Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Michael H. Cary ("Cary") is and was at all times relevant to the events set forth herein a dentist licensed to practice in the State of Wisconsin pursuant to license # 2771, granted on June 25, 1981.

2. In the course of his general practice, Cary surgically removed four wisdom teeth from a patient. The procedure involved more than nominal tissue and bone removal. Following the procedure, the patient discovered that both her lingual nerves were severed.

3. The patient commenced a civil action against Cary. A jury returned a special verdict against Cary finding that his negligent care and treatment caused the injuries to the patient.

4. Thereafter, the Department of Regulation and Licensing ("Department") commenced an investigation into the allegations that Cary violated the dentistry license law.

5. The Department has obtained evidence that raises questions about the quality of pre-operative x-rays and the nature of the consent Cary obtained from the patient prior to surgery. Cary has evidence to the contrary, including a finding from the jury that he did not fail to adequately inform the patient of the significant risks of the dental procedures.

6. Cary would contest any charges that might arise out of the Department's investigation, but for the purposes of resolving this matter and to avoid the expense and inconvenience of any proceedings, agrees to obtain the education set forth below in the Order.

7. Respondent represents that he has voluntarily agreed to restrict his removal of teeth to cases of fully erupted teeth where there is nominal tissue or bone removal.

#### CONCLUSIONS OF LAW

1. The Wisconsin Dentistry Examining Board has jurisdiction to act in this matter pursuant to Secs. 15.08(5) and 447.07(3), Wis. Stats.

2. The Wisconsin Dentistry Examining Board is authorized to enter into the attached Stipulation pursuant to Sec. 227.44(5), Wis. Stats.

3. Respondent Michael H. Cary is subject to discipline pursuant to Sec. 447.07(3), Wis. Stats.

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that consistent with the agreement of Respondent Michael H. Cary, Respondent will successfully complete a course of education and training totalling ten (10) hours in the following subject areas: (a) informed consent, (b) the importance of adequate x-rays in the surgical removal of teeth.

The course outline must be pre-approved by the Board no later than four (4) months from the date this Final Decision and Order is entered. No outline will be approved unless Respondent includes the name of the institution offering the instruction, the name of the instructor, and the content of the course he intends to study. Respondent shall submit proof of successful completion of the approved course of study to the Board within six (6) months of the date this Final Decision and Order is entered.

None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board.

IT IS FURTHER ORDERED, that investigative file 89 DEN 13 be closed.

Dated this 4 day of March, 1992.

WISCONSIN DENTISTRY EXAMINING BOARD

by: Thomas G Brandt DDS

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

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IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	STIPULATION
MICHAEL H. CARY, D.D.S.	:	89 DEN 13
RESPONDENT.	:	

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It is hereby stipulated between Michael H. Cary, personally on his own behalf, and the Department of Regulation and Licensing, Division of Enforcement by its attorney Richard Castelnuovo, as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Michael H. Cary ("Respondent") by the Division of Enforcement (89 DEN 13). Respondent consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint.

2. Respondent is aware and understands his rights with respect to disciplinary proceedings, including the right to a statement of the allegations against him; the right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel attendance of witnesses by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.

4. Respondent is aware of his right to seek legal representation and has obtained legal advice prior to execution of this Stipulation.

5. Respondent represents that he has voluntarily agreed to restrict his removal of teeth to cases of fully erupted teeth where there is nominal tissue or bone removal.

6. With respect to the attached Final Decision and Order, Respondent would contest any charges that might arise out of the Department's investigation, but for the purposes of resolving this matter and to avoid the expense and inconvenience of any proceedings, he agrees that the Board may make the findings set forth in the Findings of Fact, reach the conclusions set forth in the Conclusions of Law and enter the Order consistent with his agreement to obtain education.

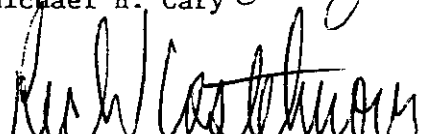
7. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

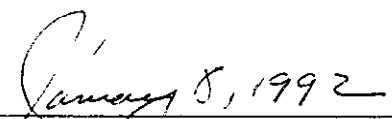
8. If the Board accepts the terms of this Stipulation, the parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

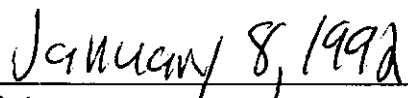
9. Respondent agrees that an attorney from the Division of Enforcement may appear at any deliberative meeting of the Board with respect to this stipulation but that appearance is limited to statements solely in support of the Stipulation and for no other purpose.

10. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

  
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Michael H. Cary

  
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Richard M. Castelnovo, Attorney  
Division of Enforcement

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Date

## NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each, and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

### 1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Dentistry Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

### 2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Dentistry Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Dentistry Examining Board.

The date of mailing of this decision is ~~March 4, 1992~~ March 4, 1992.